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STEPHEN T. PACHECO

FIRST JUDICIAL DISTRICT COURT  
STATE OF NEW MEXICO  
COUNTY OF RIO ARriba

MCC

ROBERTA MARTINEZ,

Plaintiff,

-vs-

No. D-117-CV-2013-00050

BOARD OF COUNTY COMMISSIONERS  
FOR RIO ARriba COUNTY,

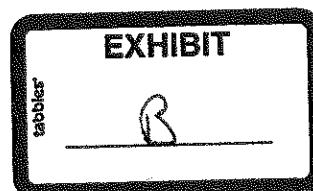
Defendant.

**DEFENDANT BOARD OF COUNTY COMMISSIONERS FOR RIO ARriba  
COUNTY'S ANSWER TO VERIFIED COMPLAINT FOR WRONGFUL  
DISCHARGE, BREACH OF CONTRACT, VIOLATION OF THE  
HUMAN RIGHTS ACT AND DISCRIMINATION**

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COMES NOW Defendant, The Rio Arriba Board of County Commissioners, by and through its counsel of record, FRENCH & ASSOCIATES, P.C. (Robert W. Becker and Paula I. Forney, appearing), and by way of answer to the verified complaint of plaintiff, Roberta Martinez, states the following:

1. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 1 and therefore denies them.
2. Defendant admits the allegations of paragraph 2.
3. Defendant denies the allegations of paragraph 3.
4. The allegations contained in paragraph 4 contain legal conclusions which therefore require no response. To the extent that it can be construed that the allegations of paragraph 4 alleges facts, Defendant admits same.
5. The allegations contained in paragraph 5 contain legal conclusions which therefore require no response. To the extent that it can be construed that the allegations of paragraph 5 alleges facts, Defendant admits same.



6. Defendant admits the allegations of paragraph 6.

7. Defendant admits the allegations of paragraph 7.

8. The allegations of paragraph 8 contain legal conclusions which therefore require no response. To the extent that it can be construed that paragraph 8 alleges facts, Defendant denies same.

9. The allegations of paragraph 9 contain legal conclusions which therefore require no response. To the extent that it can be construed that paragraph 9 allege facts, Defendant denies same.

10. Defendant admits the allegations of paragraph 10.

#### **FACTUAL BASIS**

11. Defendant admits the allegations of paragraph 11.

12. Defendant admits the allegations of paragraph 12.

13. Defendant denies the allegations of paragraph 13.

14. Defendant denies the allegations of paragraph 14.

15. Defendant admits that FMLA paperwork was requested by plaintiff on September 30, 2010 but denies the remaining allegations of paragraph 15.

16. Defendant admits that plaintiff was placed on FMLA leave effective October 27, 2010. Defendant is without knowledge or information sufficient to form a belief as to the truth of the balance of the allegations of paragraph 16.

17. Defendant admits that plaintiff's doctor submitted documents stating that plaintiff was suffering from extreme fatigue, anxiety, insomnia, infection and weakness in support of plaintiff's claim for FMLA leave.

18. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 18.

19. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 19.

20. Defendant denies the allegations of paragraph 20 as stated but admits that Plaintiff's employment was terminated.

21. Defendant denies the allegations of paragraph 21.

**COUNT I - BREACH OF CONTRACT**

22. Defendant repeats and realleges each and every answer to the previous allegations as if set forth at length herein.

23. Defendant denies the allegations of paragraph 23.

24. Defendant denies the allegations of paragraph 24.

25. Defendant denies the allegations of paragraph 25.

**COUNT II - WRONGFUL DISCHARGE**

26. Defendant repeats and realleges each and every answer to the previous allegations as if set forth of length herein.

27. Defendant admits the allegations of paragraph 27.

28. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 28.

29. Defendant denies the allegations of paragraph 29.

30. Defendant denies the allegations of paragraph 30.

**COUNT III - VIOLATION OF THE NEW MEXICO HUMAN RIGHTS ACT**

31. Defendant repeats and realleges each and every answer to the previous allegations as if set forth at length herein.

32. The allegations of paragraph 32 contain legal conclusions which therefore require no response. To the extent that it can be construed that paragraph 32 alleges facts, Defendant denies same.

33. Defendant denies the allegations of paragraph 33.

34. Defendant denies the allegations of paragraph 34.

**COUNT IV - DISCRIMINATION**

35. Defendant repeats and realleges each and every answer to the previous allegations as if set forth at length herein.

36. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 36.

37. The allegations of paragraph 37 are legal conclusions which therefore require no response. To the extent that paragraph 37 can be construed to allege facts, Defendant is without knowledge or information sufficient to form a belief as to the truth of same.

38. Defendant denies the allegations as stated.

39. Defendant denies the allegations of paragraph 39.

40. Defendant denies the allegations of paragraph 40.

41. Defendant denies the allegations of paragraph 41.

42. Defendant denies the allegations of paragraph 42.

**COUNT V – INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

43. Defendant repeats and realleges each and every answer to the previous allegations as if set forth at length herein.

44. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 44.

45. The allegations of paragraph 45 are legal conclusions which therefore require no response. To the extent that it can be construed that the allegations of paragraph 45 allege facts, Defendant is without knowledge or information sufficient to form a belief as to the truth of same.

46. Defendant denies the allegations of paragraph 46 as stated.
47. Defendant denies the allegations of paragraph 47.
48. Defendant denies the allegations of paragraph 48.
49. Defendant denies the allegations of paragraph 49.
50. Defendant denies the allegations of paragraph 50.

#### **AFFIRMATIVE DEFENSES**

**FIRST AFFIRMATIVE DEFENSE:** Plaintiff fails to state a claim for breach of contract as she has not attached the writing which she alleges constitutes the contract that was breached by Defendant.

**SECOND AFFIRMATIVE DEFENSE:** Plaintiff failed to exhaust her administrative remedies with respect to her claim alleging violation of the New Mexico Rights Act.

**THIRD AFFIRMATIVE DEFENSE:** Plaintiff failed to exhaust her administrative remedies with respect to alleging discrimination in her complaint.

**FOURTH AFFIRMATIVE DEFENSE:** Plaintiff waived any right to contest her discharge as wrongful and/or by failing to exhaust her administrative remedies by not petitioning for a writ of certiorari within the time frame prescribed by Rule 1-075 NMRA.

**FIFTH AFFIRMATIVE DEFENSE:** Plaintiff fails to state a claim for intentional infliction of emotional distress because there is no applicable waiver of sovereign immunity under the New Mexico Tort Claims Act that would permit such claim to be asserted against this defendant.

**SIXTH AFFIRMATIVE DEFENSE:** Plaintiff failed to serve proper notice of her claim pursuant to the New Mexico Tort Claims Act.

**JURY TRIAL/JURY DEMAND**

Defendant hereby demands a trial by jury on all issues so triable.

WHEREFORE, Defendant demands judgment dismissing the complaint in its entirety with prejudice and for those costs allowable by law.

Respectfully submitted,

FRENCH & ASSOCIATES, P.C.  
ATTORNEYS AT LAW

*Electronically filed*

By: /s/ Robert W. Becker, Esq.

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I HEREBY CERTIFY that on this 11<sup>th</sup> day of March, 2013, I filed the foregoing electronically through the 1st Judicial District Court, which caused the following parties or counsel to be served by electronic means, as more fully reflected on the Notice of Electronic Filing:

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/s/ Robert W. Becker  
ROBERT W. BECKER